

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ARMEL RASHARD JOHNSON,

Plaintiff,

v.

9:18-CV-0861
(GLS/DJS)

PAUL GONYEA et al.,

Defendants.

APPEARANCES:

ARMEL RASHARD JOHNSON
Plaintiff, pro se
2 Leon Ave.
Binghamton, NY 13904

GARY L. SHARPE
Senior United States District Judge

DECISION and ORDER

Plaintiff Armel Rashard Johnson commenced this action pro se in May, 2018, by filing a complaint, together with an application to proceed in forma pauperis (IFP). Dkt. No. 1 ("Compl."); Dkt. No. 6 ("IFP Application").¹ By Decision and Order filed September 20, 2018, plaintiff's IFP Application was granted, and following review of the complaint in accordance with 28 U.S.C. § 1915(e)(2)(b) and 28 U.S.C. § 1915A(b), plaintiff's claims for damages against defendant Gonyea in his official capacity were dismissed with prejudice, and

¹ This case was transferred to the Northern District of New York from the Western District of New York on July 24, 2018. See Dkt. No. 4. Thereafter, plaintiff's initial application to proceed IFP was denied as incomplete and the action was administratively closed. Dkt. No. 5. Plaintiff then properly re-filed his IFP Application, and this action was re-opened. Dkt. Nos. 6, 8.

plaintiff's other claims were conditionally dismissed without prejudice for failure to state a claim on which relief may be granted. See Dkt. No. 9 ("September 2018 Order") at 5-14. Plaintiff was advised in the September 2018 Order that, if he wished to proceed with this action, he must file an amended complaint within thirty (30) days from the date of that order, and that his failure to timely file an amended complaint would result in the Clerk entering judgment dismissing the action without prejudice without further order of the Court. *Id.* at 12-14.

On September 25, 2018, the Court received from plaintiff a notice of change of address. See Dkt. No. 10. In response, the Court issued an Order directing the Clerk to serve a copy of the September 2018 Order on plaintiff at his new address of record, and advising plaintiff that, if he wished to proceed with this action he must file an amended complaint as directed in the September 2018 Order on or before October 22, 2018. See Dkt. No. 11 ("October 2018 Order"). Plaintiff was also reminded that his failure to timely file an amended complaint as directed in the September 2018 Order would result in the Clerk entering judgment indicating that this action is dismissed without prejudice without further order of this Court. *Id.*

On October 17, 2018, the Court received from plaintiff a letter motion requesting an extension of time to submit his amended complaint. See Dkt. No. 13. On October 18, 2018, the Court granted plaintiff's request and extended his deadline to submit an amended complaint to November 30, 2018. See Dkt. No. 14. Despite this extension, plaintiff has failed to timely submit an amended complaint or seek a further extension of his deadline to do so.

Because plaintiff has not timely complied with the terms of the September 2018 Order or the October 2018 Order, this action is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B), 28 U.S.C. § 1915A(b), Rule 41(b) of the Federal Rules of Civil Procedure, and Northern District of New York Local Rule 41.2.

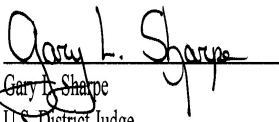
WHEREFORE, it is hereby

ORDERED that this action is **DISMISSED without prejudice** based on plaintiff's failure comply with the terms of September 2018 Order and the October 2018 Order. The Clerk shall close this case; and it is further

ORDERED that the Clerk shall serve a copy of this Decision and Order on plaintiff.

IT IS SO ORDERED.

December 10, 2018
Albany, New York



Gary L. Sharpe
U.S. District Judge